

Utah Division of Securities Commission

Meeting Minutes

January 28, 2016

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Charles Lyons, Securities Analyst
Heidi George, Securities Examiner
KristiLyn Wilkinson, Securities Investigator
Matt Edwards, Securities Investigator
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Richard Jaramillo, Securities Examiner
Bryan Cowley, Securities Examiner
Sally A. Stewart, Office Technician

Other State of Utah Employees

Gregory Soderberg, Administrative Law Judge, Department of Commerce
Tom Melton, Assistant Attorney General
Jennifer Korb, Assistant Attorney General

Commissioners Present

Erik Christiansen, Parsons Behle & Latimer
Gary Cornia, Brigham Young University
David Russon, Investment Management Consultants
Brent Baker, Clyde, Snow & Sessions
Lyle White, Fidelity Investments

Public Present

Jerry Garrett, Financial Planning Association
Gary Holyoak, Student President – USU, Financial Planning Association

Minutes: At 9:00 am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Gary Cornia** made the motion to approve the minutes from the December 3, 2015 Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell reported that Jennifer Korb has recently joined the Utah Attorney General's Office as an Assistant Attorney General. He provided a

brief professional summary about Ms. Korb. Brooke Winters, Enforcement Securities Analyst, has recently left the division. Director Woodwell stated that the Division has hired a new Enforcement Investigator, Anna Crandall, who will start at the end of February. Matt Edwards, Enforcement Investigator, will be leaving the Division in March to work for the FBI. Director Woodwell gave an update on proposed legislation for the 2016 Legislative Session. He discussed HB106 "Securities Amendments" Rep. Cunningham. This bill makes several amendments to the Utah Securities Act recommended by the Division of Securities, including changes to the statute of limitations, continuing education for investment adviser representatives, expanding the sanctions that can be imposed by the Securities Commission, codifying the factors to be considered in determining the amount of a fine, and clarifying that the prohibition against false statements made to the Division applies to statements made during the context of an examination or investigation as well as administrative proceedings. The Commission discussed the idea of the Division providing a form to people interviewed by the Division, similar to SEC Form 1661 or 1662 that will notify them of the consequences of making false statements to the Division. Director Woodwell also discussed HB19 "Expungement Amendments" Rep. Greene. This bill changes the definition of "expunge" to require complete removal of criminal records and requires that administrative records relating to the same incident as a criminal expungement be sealed. Director Woodwell also discussed HB118 "Public Access to Administrative Action Amendments" Rep. Greene. This bill requires that administrative disciplinary actions be removed from state-controlled websites after ten years and provides for an application process to remove administrative disciplinary actions from state-controlled websites after five years if all conditions of the order have been met. The Commission expressed concern that this bill could potentially violate public trust. Director Woodwell emphasized that the Division's Investor Education program will continue to convey the message of "Check Before You Invest". Director Woodwell will keep the Commission informed on this legislation and any hearings or meetings to be held on the proposed bills.

Enforcement Section Report: Dave Hermansen reported that the number of new complaints received by the Enforcement Section are slowly picking up. He provided a brief update on the new Enforcement Investigator, Anna Crandall, that was recently hired. Mr. Hermansen reported that the Enforcement Section is caught up with drafting Orders to Show Cause (OSCs) on new administrative enforcement actions. He also provided the following updates on criminal cases investigated by the Section: Gary Neilson is now bound over for trial; Lori Anderson has entered a guilty plea to two counts of securities fraud; Ann DelVechio has recently had two criminal trials. She was convicted by a jury in the first trial and agreed to enter a guilty plea in the second case; and the Dee Randall criminal trial will begin August 1, 2016 and is scheduled for two weeks.

Compliance Section Report: Ken Barton updated the Commission on year-ending 2015 Audit Statistics: the Compliance Section conducted 58 total audits. Twenty-six audits were for-cause audits triggered by investor complaints, 32 were routine audits of both investment advisor firms and broker-dealer branch offices. A few of the routine

audits will result in the Division taking administrative actions. A much smaller percentage of routine audits lead to enforcement actions compared with complaint driven for-cause audits; nevertheless, the opportunity to educate licensees, having a physical presence in Utah, and when necessary taking administrative action reinforces the value of routine audits. The Compliance Section has four administrative actions in progress. One action is on today's agenda for an approval of a Stipulation and Consent Order, one action is active, and two administrative actions are stayed pending criminal actions. At least four current audits are moving toward taking administrative action and one audit is moving toward a civil action. The Section has referred five cases to the Utah Attorney General's office for criminal prosecution. Preliminary hearings have yet to be scheduled for criminal securities fraud cases involving defendants Dean Hamilton, George Marshall, and Michael Aitken. A criminal securities fraud case involving Clark Gardner was bound over for trial, but no trial date has been set. A criminal securities fraud case involving Scott Stewart is scheduled for trial beginning March 1, 2016.

Registration and Licensing: Benjamin Johnson reported on the Corporate Finance statistics from 2015. The Division has seen the continuation of the long-term trend of a gradual reduction in non-federal covered coordinated registrations; there was a decrease of 5% last year. Rule 506 filings were basically flat with a 4% increase in mutual fund filings. Mr. Johnson also discussed a legislative change related to Regulation "A" in HB106, removing Regulation "A" offerings from treatment as registrations by coordination. Under the previous Regulation A, those type offerings did get a fairly substantive review at the SEC level. Therefore Utah included them as being eligible for a coordinated registration. The new Two Tier Regulation A system allows for general solicitation and advertising as well as sales to unaccredited investors. The Division has decided to join the other state jurisdictions and simply treat Tier 1 Regulation A offerings as state-level registrations by qualification.

Investor Education: Karen McMullin provided an update on Investor Education. In 2015, the Division of Securities participated in a total of 82 events with an estimated audience of 18,576 people. A variety of different co-sponsors, such as AARP, URS and local aging and educator agencies, provided organizational assistance for each event. Fourteen of the events were categorized as "outreach opportunities". The outreach opportunities came in the form of requests from the public for educational material for events at which the Division did not present a seminar or provide a physical presence. Positive feedback was received from the public regarding the Division's outreach effort by providing free investor education material. The outreach audience was relatively small compared to the overall audience numbers. At the beginning of 2015, the Division set a minimum audience size standard of 50 when evaluating and accepting invitations to speak at events. If an event request did not meet this minimum standard, the investor education material was offered for pick up or delivery, free of charge to the organization. On December 16, 2014, the Division of Securities took over the administration of the Stock Market Game from the Utah State Office of Education (USOE). Among the 13 SMG related events in 2015, the Division sponsored a booth at three large educators' conferences. Interest level was high among the educators, but team fees were the reason many teachers cited for non-participation. The Division decided to waive all team

fees and delete any teams that have not placed a trade by the end of the fifth week of the semester. The response from educators was overwhelmingly positive regarding the new “no charge to participate” policy. A review of the SMG financial accounts revealed a dwindling balance, low percentage of fee collection and areas where expenses could be cut. To offset the cost of the fee waiver policy, the Division decided to change the formal teacher trainings to a one-day training once a year versus the former USOE standard of a two-day training twice a year. A large savings was realized by changing the location away from the Homestead Resort. The first one-day (7 hour) teacher training was successfully held on August 5, 2015 at the Heber Wells Building. The majority of the participating teachers were attending for the first time. Professional development credit was offered to teachers for this training through USOE’s On Track system. Holding the training early in August eliminated the need to provide teacher reimbursements--another cost cutting measure. The Division is also promoting the online training webinars via our SMG webpage. The webinars are provided free each semester by SIFMA, and replace the need for a second “in person” training for Utah teachers. The yearly Teacher Training budget went from over \$18,000 in 2013 to approximately \$700 per year. Other budget cuts were made by eliminating expensive trophies at the banquet, but continuing to give recognition plaques to all winning team members. In making these changes, the banquet budget is now approximately \$6,000 per year, a decrease of approximately 50%. The Division will continue to participate in the USOE conferences for SMG marketing and introductory seminars, which are no cost/low cost events. The InvestWrite awards presented in February and March 2015 included 2 national winners in the High School and Middle School divisions. During the Fall 2015 semester, there were 934 active teams, which included 2,463 students, 57 advisors and 54 schools. The invoice for the 934 teams, at \$5.00 per team, totaled \$4,670.00. Through the Division’s 3rd year of partnering with Utah Retirement Systems (URS) on their educational seminars, the response to our presence continues to show a need for the investor protection message among public employees. Opportunities for increased education about retirement choices have also come via Utah Public Employees Association (UPEA) and one-on-one meetings at the Division with public employees. The five Investor Education goals for 2015 have been met and excellent progress has been made during the past year.

Grant Request: Utah Financial Planning Association: Jerry Garrett addressed the Commission on behalf of the Utah Financial Planning Association. He reviewed how the previous grant funds have been used and how the current funds requested will be spent. Director Woodwell indicated support for this grant proposal. The grant is for \$5,000.

Commissioner **Brent Baker** made the motion to approve the proposed grant request. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously

Education and Training Fund Report: Benjamin Johnson reported to the Commission regarding the current Education and Training Fund. Expenditures during the current period were fairly modest. Mr. Johnson reminded the Commissioners that several categories of expenses were moved to the “general fund” in order to reduce the

drain on the education fund. Mr. Johnson also explained a one-time anomaly related to cellular changes that were posted after the previous Commission meeting and will be zeroed out before the next meeting.

Following the presentation of the Education and Training fund, Commissioner **Gary Cornia** made the motion to approve the changes to the Education and Training Fund and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders

Edward J. Eyring: SD-15-0053: Recommended Order on Motion for Default.

Tom Melton reported that on November 9, 2015 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondent was ordered to file a response to the order within 30 days. Respondent failed to respond. An initial hearing was held on January 6, 2016, Respondent failed to appear. Because Respondent failed to file a Response it is recommended that a default judgement against the Respondent be entered. In the recommended default order, Respondent is ordered to pay fine of \$519,125 to the Division, with \$108,825 of the fine due and payable in full upon receipt of the Final Order. The remaining \$413,300 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondent fails to provide proof of restitution payments within the 30-day period of Final Order; the full \$519,125 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanently securities bar against the Respondent.

Commissioner **Brent Baker** made the motion to approve the proposed Order on Default. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Martin W. Macey & SureMark Worldwide, LLC: SD-15-0062; SD-15-0063: Recommended Order on Motion for Default.

Tom Melton reported that on November 24, 2015 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents were ordered to file a response to the order within 30 days. Respondents failed to respond. An initial hearing was held on January 6, 2016, Respondents failed to appear. Because Respondents failed to file a Response it is recommended that a default judgement against the Respondents be entered. In the recommended default order, Respondents are ordered to pay fine of \$200,000 to the Division, with \$40,000 of the fine due and payable in full upon receipt of the Final Order. The remaining \$160,000 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondents fail to provide proof of restitution payments within the 30-day period of Final Order; the full \$200,000 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Dave Russon** made the motion to approve the proposed Order on Default. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

John Ryan: SD-15-0056: Recommended Order on Motion for Default.

Tom Melton reported that on November 20, 2015 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondent was ordered to file a response to the order within 30 days. Respondent failed to respond. An initial hearing was held on January 6, 2016, Respondent failed to appear. Because Respondent failed to file a Response it is recommended that a default judgement against the Respondent be entered. In the recommended default order, Respondent is ordered to pay fine of \$118,941.04 to the Division, with \$23,788.24 of the fine due and payable in full upon receipt of the Final Order. The remaining \$195,152.80 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondent fails to provide proof of restitution payments within the 30-day period of Final Order; the full \$118,941.04 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondent. Commissioner **Gary Cornia** made the motion to approve the proposed Order on Default. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Brett A. Thompson and Venture Leverage Group, LLC: SD-15-0057; SD-15-0058: Recommended Order on Motion for Default.

Tom Melton reported that on November 20, 2015 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents were ordered to file a response to the order within 30 days. Respondents failed to respond. An initial hearing was held on January 6, 2016, Respondents failed to appear. Because Respondents failed to file a Response it is recommended that a default judgement against the Respondents be entered. In the recommended default order, Respondents are ordered to pay fine of \$10,250 to the Division, with \$1,250 of the fine due and payable in full upon receipt of the Final Order. The remaining \$9,000 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondents fail to provide proof of restitution payments within the 30-day period of Final Order; the full \$9,000 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents. Commissioner **Brent Baker** made the motion to approve the proposed Order on Default. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Charles Scot Roundtree & High Fly'n Zip Lines, LLC: SD-15-0026; SD-15-0027: Recommended Order on Motion for Default.

Tom Melton reported that on May 27, 2015 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents filed a Response on July 13, 2015 and an initial hearing was held. Respondents did not appear at the December 3, 2015 Commission Meeting for the hearing. Because Respondents failed to appear at the initial hearing it is recommended that a default judgement against the Respondents be entered. In the recommended default order, Respondents are ordered to pay fine of \$92,812.25 to the Division, with \$18,562.25 of

the fine due and payable in full upon receipt of the Final Order. The remaining \$74,250 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondents fail to provide proof of restitution payments within the 30-day period of Final Order; the full \$92,812.25 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents. Commissioner **Lyle White** made the motion to approve the proposed Order on Default. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Ronald Richter: SD-14-0034: Stipulation and Consent Order.

Matt Edwards reported that on or about August 20, 2014, the Division initiated a Notice of Agency Action and Order to Show Cause against the Respondent. Respondent violated the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading. The Respondent neither admits nor denies the Division's findings of fact and conclusions of law. As part of the Stipulation, Respondent agrees to a total fine of \$16,000. The fine amount is due as follows: \$4,000 within 10 days of entry of the Order and \$500 per month for 24 months thereafter. If Respondent materially violates any terms of the Order, the unpaid balance of the fine amount shall be imposed and become due immediately. Failure to comply with the payment provisions in this Order may result in the referral of the fine to the State Office of Debt Collection. The Consent Order also includes a cease and desist order and a permanent securities bar against the Respondent.

Commissioner **Gary Cornia** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Brett Allen Petersen, Monarch Global, LLC and Atlas Management Group, LLC: SD-15-0034: Stipulation and Consent Order.

Matt Edwards reported that on or about May 28, 2015, the Division initiated a Notice of Agency Action and Order to Show Cause against the Respondents. Respondents violated the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading. The Respondents admit the Division's findings of fact and conclusions of law. As part of the Stipulation, Respondents agree to a total fine of \$7,500. The fine amount shall be due and payable within 15 days of the entry of the Order. Failure to comply with the payment provisions in this Order may result in the referral of the fine to the State Office of Debt Collection. The Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Brent Baker** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Bret Cartwright and Exceptional Realty: SD-15-0036; SD-15-0037: Stipulation and Consent Order.

KristiLyn Wilkinson reported that on or about August 12, 2015, the Division initiated a Notice of Agency Action and Order to Show Cause against the Respondents.

Respondents violated the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading. The Respondents neither admit nor deny the Division's findings of fact and conclusions of law. As part of the Stipulation, Respondents agree to a total fine of \$7,363.09; to be offset by payments of restitution to the investors in the amount of \$4,363.09, of which \$2,200 of the fine amount shall be due and payable within 30 days of the entry of this Order to investors. The remaining \$2,163.09 in restitution shall be paid within 90 days of the date of the Order to the investors and proof of the restitution to the investors shall be provided to the Division's counsel. The balance of \$3,000 shall be paid to the Division within 180 days of the Order. Failure to comply with the payment provisions in this Order may result in the referral of the fine to the State Office of Debt Collection. The Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Dave Russon** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

Sherrell Berrett: SD-15-0044: Stipulation and Consent Order.

Richard Jaramillo reported that on March 30, 2010 the Division initiated administrative actions against Berrett, Peak Financial Group, LLC, Jesse S. Heaton and Mark Bench (collectively referred to at times as "Peak Respondents"). Peak is a defunct limited liability company that was formed, owned and controlled by Berrett, Heaton and Bench during the period relevant to this matter. The 2010 Actions were based upon Peak Respondents' pooling of approximately \$1,020,112 in monies from 15 investors. In October 2010, based on Peak Respondents' representations that the Peak Fund's assets could be liquidated and would generate sufficient monies to fully repay investors, the Division entered into a Stipulation and Consent Order with the Peak Respondents. Following the entry of the 2010 Order, for various reasons from illiquid nature of investments as well as bad investments, Peak Respondents were unable to fully liquidate the Peak fund and return all monies to investors. Berrett, Heaton and Bench have repaid investors a portion of the funds. Berrett's investors' principal accounted for \$507,112 of the total collected for the Peak fund, of which Berrett has repaid investors \$84,900. Berrett submitted to the Division signed releases of liability from three investors for monies owed, reducing the amount owed to \$78,528. Following a guilty plea for felony securities fraud on June 16, 2014 in a separate case, Berrett was ordered to pay restitution in the amount of \$1,308,364.73. To date, Berrett has made no payments to that case. He is currently incarcerated at the Utah State Prison. Mr. Jaramillo reported that on or about August 31, 2015, the Division initiated a Notice of Agency Action and Order to Show Cause against the Respondent, based on the failure of the Respondent to comply with the 2010 Stipulation and Consent Order. The Respondent admits the Divisions findings and consents to the sanctions being imposed

by the Division. As part of the Stipulation, the Respondent agrees to a total fine of \$88,578. The fine shall be paid within 180 days following entry of this order. Failure to comply with the payment provisions in this Order may result in the referral of the fine to the State Office of Debt Collection. The Consent Order also includes a cease and desist order and a permanent securities bar against the Respondent.

Commissioner **Dave Russon** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Future Meeting Schedule:

March 24, 2016 room 403, starting at 9am (includes a hearing)

May 26, 2016, room 451, starting at 9am

August 4, 2016, room 403, starting at 9am

September 22, 2016, room 403, starting at 9am

December 1, 2016, room 403, starting at 9am

Approved: _____
Erik Christiansen, Chairman

Date: _____